

REMARKS/ARGUMENTS

Applicant and his attorney appreciate the interview of 20 September 2005 granted by the Examiner and her supervisor, Milton Cano, wherein we discussed how the invention defines over the prior art and how to better prosecute claim language to reflect this fact. After the inventor explained the invention in detail and clarified the step of presetting and molding the edible protein thin film matrix prior to bonding, the Examiner suggested to limit the protein source to surimi to better define the claimed invention. Therefore, the present response/amendment is intended to incorporate those agreements reached between the applicant and the Office. In furtherance thereof, applicant offers the following commentary and arguments in support of patentability of the invention.

With respect to claim 1 and those claims dependent thereon, Devro Limited (WO 92/01394 (the '394 publication)) and Kojima *et al.* (JP 56137871A (the '871 patent)) are inapplicable as a basis for rejecting the claimed invention. The invention disclosed in the '394 publication is a collagen protein, ultra-thin film moisture barrier. As stated previously by the applicant, the publication states that "...the films of the invention are generally undetectable (whether visually or organoleptically) in the cooked products." Page 5, at lines 3-6. Thus, while there is no disclosure concerning the thickness of the films, one can infer that they are sufficiently thin so as to be generally undetectable. This inference is further bolstered by the fact that a hydrophobic coating applied to the film is only 0.0005" thick. Page 10, at lines 35-36. As a result, the disclosed moisture barrier film is intended to be overlooked by the consumer, and it appears to meet this objective.

Apparently conceding that the '394 publication lacks disclosure concerning comparatively thick films, the Examiner relies upon the '871 patent to establish the presence in the prior art of thicker films, *i.e.*, films in the range claimed applicant. However, the Examiner has failed to provide the necessary motivation for a skilled

practitioner to seek and incorporate the teachings of the '871 patent into the basic technology disclosed in the '394 publication.

As established above, the intended purpose of the thin film of the '394 publication is to be transparent to the consumer. For this reason, the invention of the '394 publication relies upon a collagen protein mixture (preferably from cattle skin or intestines) as opposed to that comprised of muscle tissue, since it is not feasible to obtain the required very thin film from a non-collagen protein mixture. A skilled practitioner in the edible moisture barrier arts would not be motivated to seek alternative film compositions that a) could not form the required thin film, or b) create thick films contrary to the objectives of the invention of the '394 publication as stated above and therein. Stated alternatively, why would a skilled practitioner seeking to create a thin film that is imperceptible to a consumer be motivated to seek alternative film compositions that can only form highly perceptible films, thus defeating the very objectives of the '394 technology? Furthermore, why would such a practitioner wish to create comparatively thick films in the first place? The answers to both of these questions is in the negative; a skilled practitioner would not be inclined to seek such comparatively thick films nor be inclined to increase the perceptibility of moisture barrier films. Thus, the combination advanced by the Examiner to reject the invention of claim 1 is improper and must be withdrawn.

While not advanced by the Examiner, given its lack of disclosure concerning the composition of the surimi, applicant also wishes to establish the inapplicability of Nakajima US 4670276 (the '276 patent) for any reason. The '276 patent concerns sheets of fully cured surimi used to make laminated sandwich-like foods. The intermediary film (that which is used just prior to formation of the final product) is fully heated and dried prior to subsequent usage. See, e.g., the Abstract. Thus, the protein matrix in the surimi has been irreversibly modified to a fixed matrix state after heating and drying (much like the non-yolk portion of an egg), and no longer exhibits the same or similar degree of viscosity that an uncured intermediate film would. Because applicant's claim 1 requires a generally uncured intermediary film that is used as a

precursor to a final curing process, the '276 patent neither discloses nor teaches the use of such intermediary films; its films are not uncured.

With respect to claim 20 and those claims dependent thereon, Devro Limited (WO 92/01394 (the '394 publication)) and Kojima et al. (JP 56137871A (the '871 patent)) and Food Packaging Technology (FPT) are inapplicable as a basis for rejecting the claimed invention. Claim 20 differs from claim 1 in that it is directed to describing the nature of the joinder between two films comprising processed protein. As elucidated during applicant's interview with the Examiner, usage of the following terms and phrases, whose meanings are present in the specification, is neither incidental nor accidental: "preset film"; "joined"; "prior to and during subsequent curing". Through experimentation, it has been found that creation of a cavity or pocket from the intermediary films is optimized when an initial form is established, beginning with preset films. Once the films are set, and thus take on the form imparted by, for example, a mold, selected portions of each film can be joined to one another prior to and during a subsequent curing action to form the desired bonds. If the intermediary sheets were cured prior to the subsequent joinder, a bond could not be formed absent the use of some "glue" such as molten cheese, which applicant implicitly rejects. See, page 5, line 19 to page 6, line 3 in applicant's WO 03/034829 publication for background on these terms and phrases.

In view of the foregoing, applicant has been unable to identify any prior art reference that discloses or suggests a configurable protein matrix comprising two preset films that are selectively joined to each other, prior to any formal curing, in order to create a direct film-to-film bond during formal curing. The invention disclosed in the '276 patent relies upon a filler layer to effectuate a bond between two cured sheets of surimi. This is not what is claimed in applicant's claim 20. Moreover, the technology disclosed in the '276 patent teaches by omission that a surimi-to-surimi bond is not possible without such a filler layer. The Examiner's attempts to rely upon FPT to establish knowledge in the art concerning bonding of one film to another do not take into consideration the claimed limitations. However, simple heat and compression of a

cured film is not what applicant claims, nor are there any suggestions in this or other references supporting the Examiner's proposition. The fact remains that the bonds between the preset films are carefully created, and the means by which they are created are not disclosed or fairly taught in the prior art.

While not required by the prior art to establish patentability of the claimed invention, applicant has amended claim 20 to reflect the specific nature of the subject protein, namely that it is muscle protein (of which surimi is a species) that specifically excludes applicability of collagen protein.

With respect to amended claim 26, it should be clear that a proteinacious envelope defining an opening through which foodstuffs may be inserted patentably defines over the prior art of record for the reasons stated above. To clarify the nature of the envelope, applicant has amended this claim to require that at least a portion of the envelope comprises a film-to-film bond. Having established that a film-to-film bond of a high protein film material (> 50% protein by weight) must occur during the curing of the film, and having established the lack of such disclosure in the prior art of record, applicant submits that claim 26 and those dependent thereon patentably define over the prior art.

Errata:

In response to the Examiner's objection to the specification and rejection of claim 7 under 35 USC §112, applicant submits the reference Surimi and Surimi Seafood detailing the industry accepted methodology for characterizing "gel strength" or stiffness of surimi gels. In view of this reference, applicant submits that its measurement units are correct and respectfully requests the Examiner to withdraw her objection and rejection.

Respectfully submitted this 28th day of October, 2005.

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A handwritten signature in black ink, appearing to read "Stephen M. Evans", written in a cursive style.

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